

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Karran Lynn Betterton,

Plaintiff,

v.

Commissioner of Social Security
Administration,

Defendant.

No. CV-24-01623-PHX-JJT

ORDER

Before the Court is the Report and Recommendation (“Doc. 23, “R&R”) entered by United States Magistrate Judge Alison S Bachus concluding that this Court should reverse the final decision of the Commissioner of the Social Security Administration (“SSA”) denying Plaintiff’s application for Social Security Disability Insurance and Supplemental Security Income, and remand to SSA for further proceedings. Plaintiff has filed an Objection to the R&R, agreeing with its recommendation for reversal, but seeking remand for a calculation of final benefits, rather than for further proceedings. (Doc 24.) Defendant has responded in opposition to that Objection (Doc. 25), urging the Court to follow Judge Bachus’s R&R and remand for additional proceedings.

The Court will adopt Judge Bachus's R&R in whole, including its reasoning, on a finding that such further proceedings do not amount merely to a “mulligan” for the ALJ as Plaintiff characterized, but rather that further proceedings serve a useful purpose here. Thus, a correct application of the credit-as-true rule justifies remand for further proceedings.

1 In her Objections, Plaintiff argues that all three elements of the credit-as-true rule
2 are met and that “[t]he R&R does not suggest that there is serious doubt in the record that
3 [she] is disabled.” (Doc. 24 at 5). In the R&R, Judge Bachus found further proceedings
4 would be useful to resolve ambiguities in the record as to at least two issues: 1) whether
5 Plaintiff’s migraines “are adequately controlled with treatments such as Topamax and
6 nerve block injections” and 2) whether her fibromyalgia “requires lifestyle modifications
7 that would preclude her from working.” (R&R at 12-13.)

8 Plaintiff argues that the ambiguities the R&R identified “are rendered unambiguous
9 by the R&R itself,” concluding that as to the first issue, the record evidence is fully
10 developed that she could not work even with the migraine treatments. The Court is not
11 persuaded as to this first argument. As Defendant points out, whether the treatments
12 stopped the migraines altogether or not is not the question; rather, it is whether what
13 remains in terms of migraines after treatment is “work preclusive,” and on this point, the
14 record remains ambiguous. Further proceedings would have a purpose.

15 The Court finds Plaintiff’s argument on the second issue—that “any erroneous
16 ambiguity” in the record regarding Plaintiff’s limitations from fibromyalgia “is actually
17 within the ALJ’s reasoning, not within the evidence corroborating [Plaintiff’s] symptoms”
18 (Doc. 24 at 6)—to be somewhat circular and ultimately not convincing. Defendant points
19 to the results of several examinations that conflict with or contradict Plaintiff’s complaints
20 of muscle weakness, stiffness and difficulty walking. These conflicts in the evidence
21 itself—not the ALJ’s reasoning in evaluating it—demonstrate sufficient ambiguity to
22 justify further proceedings on precisely this point.


23 **IT IS ORDERED** overruling Plaintiff’s Objections (Doc. 24) and adopting the
24 reasoning and conclusions of the R&R (Doc. 23).

25 **IT IS FURTHER ORDERED** reversing and remanding the final decision of the
26 Commissioner for further proceedings consistent with this Order.

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28 ...

Dated this 7th day of May, 2025.

25. 
Honorable John J. Tuchi
United States District Judge